IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
S.B. Civil Second Appeal No.445/2001

Mahaveer Prasad Saroj S/o Shri Shiv Dayal
...plaintiff-appellant
Versus
Rajasthan State Road Transport Corporation
through its Managing Director, Jaipur
& Two Others
...defendant-respondents

Date of Order ::: 11.9.2006

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Bhanwar Bagri, Counsel for plaintiff-appellant
None present for the defendant-respondents
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//REPORTABLE//

By the Court:-

Heard learned counsel for the plaintiff-appellant.

This second appeal, on behalf of the plaintiff under Section 100 of the Code of Civil Procedure, is directed against the judgment and decree dated 19th of August, 1999, passed by Additional District Judge, No.4, Jaipur City, Jaipur, in Regular Civil Appeal No.100/1992, whereby he dismissed the appeal of the plaintiff and affirmed the judgment and decree dated 27th of July, 1992 passed by the Additional Munsif & Judicial Magistrate No.3, Jaipur City, Jaipur, in Civil Suit No.554/1987 (329/1987), whereby the learned lower court dismissed the suit of the plaintiff for declaration.

The plaintiff filed a suit for declaration to declare the order dated 21st of August, 1985 as illegal and void, whereby the service of the plaintiff was terminated from the post of Conductor. It was pleaded that the plaintiff was selected by the Selection Committee and was appointed on the post of Conductor on probation vide order dated 27th of March, 1985. The plaintiff pleaded that the impugned order dated 21.8.1985 is contrary to Section 35 of the Standing Orders of the defendant Corporation. It was also pleaded that he was removed on the basis of wrong report dated 18.8.1985, wherein it was reported that when the bus, in which the plaintiff was deployed as Conductor, was checked on 18.8.1985, 21 passengers were found traveling without ticket.

The suit was contested by the defendants by filing written statement. The learned lower court, on the basis of pleadings of the parties, framed five issues. The issue no.1 was whether the order dated 21.8.1985 terminating the service of the plaintiff is illegal. The issue no.3 was whether the civil court has jurisdiction to hear the present suit. Both the parties led oral and documentary evidence in support of their case. The learned lower court vide its judgment dated 27.7.1992 decided issue no.3 relating to jurisdiction of the civil court in favour of the plaintiff and against the defendants and held that the civil court has jurisdiction to try the suit. But, so far as issue no.1 about validity of the impugned order dated 21.8.1985 is concerned, it was held that the order dated

21.8.1985 was rightly passed and consequently the issue no.1 was decided against the plaintiff and in favour of the defendants. In view of the finding of the lower court in respect of issue no.1 against the plaintiff, the suit of the plaintiff was dismissed. Being aggrieved with the same, an appeal was preferred but the same was dismissed by he first appellate court vide impugned judgment dated 19.8.1999. The first appellate court affirmed the finding of the lower court in respect of all the issues including issues no.1 and 3, as referred above. Hence, this second appeal has been preferred on behalf of the plaintiff.

The learned counsel for the appellants, Shri Bhanwar Bagri contended that the civil court had jurisdiction to entertain, try and hear the present suit even if it was an industrial dispute and in support of his contention he referred the decisions in the cases of Mohan Lal Mali Vs. R.S.R.T.C. & Another, 1991 (1) RLR 229, Sukhi Ram Vs. State of Haryana (Pb. & Hry) , 1982 (1) SLR 663 (Full Bench), and R.S.R.T.C. & Another Vs. Ugma Ram Choudhary, 2005 SCC (L&S) 68. No other submission was made by Shri Bhanwar Bagri, Counsel for the plaintiff-appellant, in the present case.

Although, in the present case the issue no.3 relating to jurisdiction of civil court was not required to be argued on behalf of the appellant as both the courts below had decided this issue in favour of the plaintiff and the suit of the plaintiff was dismissed in view of the finding of the lower court in respect of issue no.1.

However, the learned counsel for the plaintiff-appellant argued about jurisdiction of the civil court in the present matter, therefore the same is being considered in the light of his submissions. It is relevant to mention that there is no dispute that R.S.R.T.C. is an industry and the plaintiff holding the post of Conductor is a workman in the present case and this is a matter relating to dismissal/retrenchment of the plaintiff, therefore the present dispute is an industrial dispute, within the meaning of Section 2 (k) of the Industrial Disputes Act, 1947.

In Mohan Lal Mali's case (supra), a Single Bench of this Court considered the Division Bench decision in the case of RSRTC Vs. Kaluram & Others (1988 (1) RLR 697) and another decision of the Hon'ble Apex Court in the case of Premier Automobiles Vs. K.S. Wadke (AIR 1975 SC 2238), and held that the civil court had jurisdiction to try the said suit. Para 9 and 11 of the judgment in Mohan Lal Mali's case are reproduced as under:-

> “9. As far as this Court is concerned, this matter was referred to Division Bench in the case of RSRTC Vs. Kaluram & Others, wherein the division bench of this Court relying on Premier Automobiles' case (supra) and other cases, held that the jurisdiction of the civil court is not barred.
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> 11. Premier Automobiles' case (supra) had been decided by a bench consisting of three Judges and this authority has been followed by another bench consisting of three Judges in

> Rohitash Industries Ltd.'s case. In Prathma Bank's case (supra), a bench consisting of two Judges has taken the same view, so also in Muniruddin's case (supra), whereas Hon'ble the Supreme Court in Jitendra Nath's case (supra) has not referred to any of the above cases earlier decided by it, and have placed reliance on an earlier decision in Bombay Union of Journalists Vs. State of Bombay. In the case of Muniruddin (supra) their lordships of the Supreme Court upheld the decision of the High Court in a second appeal, setting aside the order of the dismissal on account of violation of the principles of natural justice, meaning thereby that the civil court had jurisdiction to try such suits. In this view of the matter, I am not inclined to agree with the view of the learned counsel for the respondents that I am not bound by the judgment of the division bench of this Court in Kaluram's case (supra) and as such, I reaffirm the finding of the trial court with regard to Issue No.2 and hold that the civil court had jurisdiction to try such suit.”

In Sukhi Ram's case (supra) the Full Bench of the Punjab and Haryana High Court considered the provisions of Section 9 of the C.P.C. as well as Section 10 of the Industrial Disputes Act, 1947. The Full Bench also considered the principles on the question of jurisdiction laid down by the Hon'ble Apex Court in Premier Automobiles' case (supra), and in Para 14 of the judgment held as under:-

> “14. In the light of the aforesaid discussion, we would render the answer to the

> question as re-framed (in paragraph 2 above) in the affirmative. It is held that the Civil Court has jurisdiction to entertain a suit by a workman in connection with an industrial dispute arising out of the right or liability under the general or the common law (and not under the Act), if no steps had been earlier taken by him to resort to the remedy under the Industrial Disputes Act.”

In Rajasthan State Road Transport Corporation Vs. Zakir Hussain, {2005 (7) SCC 447}, the Hon'ble Supreme Court considered the similar question whether civil court has jurisdiction to entertain the suit. This was a case relating to interpretation of standing order of the Rajasthan State Road Transport Corporation Workshop Employees. The Hon'ble Apex Court considered its earlier number of judgments including the judgment given in the case of Premier Automobiles' case (supra) and held that the suit before the Civil Court is not maintainable and the only remedy available to the workman is by way of reference under the provisions of the Industrial Disputes Act, 1947. The relevant Paragraphs no.31 and 32 of the aforesaid judgment of the Hon'ble Apex Court in R.S.R.T.C. Vs. Zakir Hussain's case (supra) are reproduced here as under:-

> “31. For the foregoing reasons, we hold that the respondent ought to have approached the remedies provided under the Industrial Disputes Act. He has miserably failed to do so but approached the civil court, which on the facts and circumstances of the case has no jurisdiction to entertain and try the suit.

> 32. The respondent has not acted bona fide in instituting the suit. It is seen from the order of the High Court that the respondent had been reinstated in service in the year 1990 and the back-wages had also been paid to him. Though in law, the respondent is not entitled to any back-wages, having regard to the facts and circumstances of this case, we are not inclined to order refund of the back-wages already paid to the respondent. But we make it very clear that the respondent shall not be allowed to continue in service any further. He shall not be entitled to any further emoluments or service benefits except the amount, which has already been paid to him. The respondent shall be discharged forthwith. No costs. The appeal stands allowed."

In the case of Rajasthan State Road Transport Corporation & Another Vs. Ugma Ram Choudhary, (2006 SCC (L&S) 58), the three-Judges Bench of the Hon'ble Supreme Court considered the similar question and followed the judgments given in the cases of Rajasthan State Road Transport Corporation Vs. Zakir Hussain (supra) and RSRTC Vs. Khadarmal (2006) 1 SCC 59, and held that the civil court has no jurisdiction to entertain, try and decide the civil suit relating to industrial dispute. Relevant Paragraphs 2, 3 and 4 are reproduced as under:-

> "2. One of the questions raised in these appeals is whether the civil court had jurisdiction to entertain the suit filed by the respondent for setting aside an order of termination and for consequential declarations. This

question is no longer res integra. This Court in Rajasthan SRTC Vs. Krishna Kant (1995) 5 SCC 75 and in Rajasthan SRTC v. Zakir Hussain, (2005) 7 SCC 447 and in an unreported (Now reported at ({2006} 1 SCC 59) order of this Court dated 6-10-2005 in Rajasthan SRTC v. Khadarmal has held that a civil court has no jurisdiction. In view of these decisions, it has to be held that the civil court has no jurisdiction to grant a relief of reinstatement and the consequential reliefs. Thus, the orders passed are without jurisdiction and are hereby set aside.

3. Reliance was placed upon Para 37 of the judgment in Krishna Kant case which reads as follows: (SCC p.96)

> “37 It is directed that the principles enunciated in this judgment shall apply to all pending matters except where decrees have been passed by the trial court and the matters are pending in appeal or second appeal, as the case may be. All suits pending in the trial court shall be governed by the principles enunciated herein – as also the suits and proceedings to be instituted hereinafter.”

It was submitted that even in this case the suit was filed much before this judgment was delivered. It was submitted that the decree had also been passed before this judgment was delivered. It was submitted that this Court should also hold that the decree is not affected by the judgment of this Court.

4. Paragraph 37 of Krishna Kant case has been considered by this Court in para 35 of Zakir Hussain case. It has been held that once it is held that the

> civil court has no jurisdiction, the consequences must follow. This view has been reiterated by this Court in the unreported judgment in Khadarmal case. Therefore, it is not possible to accept this submission."

The Hon'ble Apex Court again considered the same question about jurisdiction of civil court in such matters, in a latest judgment delivered on 11th of July, 2006 in Rajasthan SRTC & Others Vs. Ramdhara Indoliya {2006 (6) S.C.C. Page 287 and held that in such matters civil court has no jurisdiction to entertain, try and decide the civil suit and the only remedy available to the plaintiff workman is by way of reference under the provisions of Industrial Disputes Act, 1947. The relevant Paragraphs 3, 4 and 5 of the aforesaid judgment are reproduced as under:-

> "3. We have heard Mr. S.K. Jain, learned counsel for the appellants. The respondent was appointed as a Conductor on daily wages by the corporation. His services were terminated as the same were not required by the corporation. The High Court, without considering the fact that the respondent being a daily-wager has no substantive right to hold the post, however, has committed serious error in dismissing the second appeal filed by the corporation and affirming the judgment and decree passed by the Appellate Court and also of the trial Court. In our view, the High Court has committed a grave error in not considering the fact that the respondent being a workman and the dispute being an industrial dispute, the Civil Court has no jurisdiction to try the suit for reinstatement. The trial court which passed the

decree has got no pecuniary jurisdiction and, therefore, the decree passed by the trial court is without jurisdiction. The above submission made by Mr. S.K. Jain merits acceptance. In fact, in the written statement filed by the appellant corporation, the question of jurisdiction has been specifically raised. The Court has also framed an issue in regard to the jurisdiction and hearing by the civil Court. However, the said issue has not been rightly considered and properly answered.

4.The case on hand is covered by a very recent decision of this Court reported in Rajasthan SRTC Vs. Zakir Hussain 2005 (7) SCC 447 (decided by Mrs. Justice Ruma Pal and Dr. Justice AR. Lakshmanan). The said appeal was filed by the very same Road Transport Corporation, against its workman, who was appointed as Conductor on probation and his services were terminated by the corporation, which was challenged by the workman. The very same workman had approached the civil Court and obtained a decree, which was affirmed by the Appellate Court and also by the High Court, against which Civil Appeal No.5176 of 2005 was filed by the Rajasthan State Road Transport Corporation in this Court. This Court, after hearing the Counsel appearing for the respective parties, held that the only remedy available to the workman was by way of reference under the Industrial Disputes Act and not by way of a suit. This Court also held that the workman in that case was also not entitled to the protection under Article 311 (2) of the Constitution of India. This Court also held that if the Court has no jurisdiction, the jurisdiction cannot be conferred by any order of the Court. This

> Court also held that where an Act creates an obligation and enforces the performance in a specified manner, the performance cannot be enforced in any other manner. The respondent in that case has failed to approach the authorities provided under the Industrial Disputes Act.
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> 5. In the instant case also, the respondent, who is also similarly placed as in the other case covered by the Industrial Disputes Act, has failed to approach the Industrial Court, but approached the civil Court, which on the facts and circumstances of the case had no jurisdiction to entertain and try the suit. Therefore, this judgment (supra) rendered by this Court squarely applies to the facts and circumstances of this case. In our view, the respondent is not entitled to any payment by way of salary or other wages. He is also not entitled to any reinstatement or back wages. However, if the respondent has already been paid some amount, the same amount may not be recovered from him. We make it clear that the respondent shall not be entitled to continue in service any further and he shall not be entitled to any wages except to that already paid to him. The respondent shall be discharged forthwith."

The above referred judgments make it very clear that the question as to whether the civil court had jurisdiction to entertain the suit filed by the plaintiff for setting aside the order of termination/retrenchment and for consequential declaration, has already been answered by the Hon'ble Supreme Court in the decisions in the cases of

Rajasthan State Road Transport Corporation Vs. Zakir Hussain, (supra), R.S.R.T.C. & Another Vs. Ugma Ram Choudhary (supra) and R.S.R.T.C. & Others Vs. Ramdhara Indoliya, (supra), and in view of this position of law, the finding of the courts below in the present case in respect of issue no.3 is illegal and cannot be allowed to be sustained and while exercising powers under Order 41 Rule 33 of the C.P.C. the finding of the lower court in respect of issue no.3 relating to jurisdiction of civil court, which has been affirmed by the first appellate court, is set-aside.

So far as judgments given in Mohan Lal Mali's case (supra) and Sukhi Ram's case (supra) are concerned, it is relevant to mention that in both the cases, the judgment of the Hon'ble Apex Court in Premier Automobiles' case (supra) was considered. In Para 12 of the decision in Rajasthan State Road Transport Corporation Vs. Zakir Hussain's case (supra), the Hon'ble Apex Court considered the Premier Automobiles' case (supra) and the decision in Rajasthan State Road Transport Corporation Vs. Zakir Hussain's case (supra) has further been followed by three-Judges Bench of the Hon'ble Supreme Court in R.S.R.T.C. & Another Vs. Ugma Ram Choudhry's case (supra). Therefore, both the judgments in Mohan Lal Mali's case (supra) as well as Sukhi Ram's case (supra) stand impliedly overruled by the Hon'ble Supreme Court.

So far as merits of the present case are concerned, as already referred above, the learned lower court decided

the issue no.1 against the plaintiff and held that the impugned order of termination/retrenchment was legally passed and the judgment of the lower court has been affirmed by the first appellate court also, therefore, on merits also there is a concurrent finding in respect of issue no.1 by both the courts below against the plaintiff-appellant, which cannot be interfered with by this Court in this second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal and the same is dismissed at admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.

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